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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

SWARAN KAUR,

Plaintiff and Appellant,

v.

JANDARK FARD et al.,

Defendants and Respondents.

B285014

Los Angeles County
Super. Ct. No. BC611375

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert B. Broadbelt III, Judge. Affirmed.

McNicholas & McNicholas, Matthew S. McNicholas, Douglas D. Winter, Juan C. Victoria; Esner, Chang & Boyer, Stuart B. Esner and Steffi A. Jose for Plaintiff and Appellant.

Demler, Armstrong & Rowland, Bjorn C. Green and Pennie P. Liu for Defendant and Respondent.

INTRODUCTION

Defendant Jandark Fard owns a single-family home that she leases to a tenant. One of the tenant's dogs attacked plaintiff Swaran Kaur as she was walking on the sidewalk near the home. Kaur sued Fard for negligence, claiming Fard was aware her tenant owned a dangerous dog and failed to prevent the dog from injuring bystanders walking near Fard's property. Fard moved for summary judgment on the grounds there was no evidence she knew, or must have known, that her tenant kept a dangerous dog on the property. The court granted Fard's motion and entered judgment in her favor. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. Prior Incidents Involving the Tenant's Dogs

Since 1996, Fard has owned a single-family home on Tampa Avenue in Reseda (the Property). In April 2011, Fard entered a one-year lease agreement for the Property with Glenna Mathews. The April 2011 agreement, which was drafted by Fard's daughter, allowed Mathews to keep "1 OUTDOOR DOG MEDIUM SIZE (LABRADOR)" on the Property. Although she signed it, Fard never read the agreement until after this lawsuit was filed. After the April 2011 agreement expired, Fard and Mathews entered a new lease agreement in May 2012. The new agreement included a provision prohibiting Mathews from keeping any pets on the Property without Fard's written consent. Fard and Mathews have not signed any other lease agreements.

Mathews and Steven Anthony¹ kept three dogs on the Property: a white and brown part pit bull named Beau, a black and white part Staffordshire Terrier named Spot, and a black part Labrador Retriever named Chocolate. Fard visited the Property “once or twice” after Mathews moved in, but she did not know Mathews kept dogs at the Property until after this lawsuit was filed.

In April 2014, the Department of Animal Services inspected the Property and cited Mathews because she did not have a license to own Beau, Chocolate, and Spot, and she had tethered the dogs in the backyard for long periods of time. Mathews explained she tethered the dogs because officers from the Los Angeles Police Department told her and Anthony to “tie up their dogs.” The Department of Animal Services cited Mathews again in May and June 2014 for continuing to tether one of the dogs. Nothing in the record shows Mathews or the Department of Animal Services informed Fard about the inspections or citations.

On January 10, 2015, Joseph Haro was walking his dog near the Property when two black dogs attacked him. Neighbors who witnessed the attack told Haro the dogs belonged to the Property’s tenants. Haro sustained an injury to his left hand and was taken to the hospital for treatment.²

¹ Anthony is not named in any of the leases Fard and Mathews signed, but he apparently lived with Mathews at the Property.

² Although a police report was drafted shortly after the attack, nothing in the record shows Fard received a copy of that report before this lawsuit was filed.

Haro retained an attorney to represent him in connection with the January 2015 attack. Between late-April and early-July 2015, Haro's attorney sent three letters addressed to Fard to a home in Tarzana.³ All three letters identified Haro as the attorney's client and stated that a "dog bite incident" occurred at the Property. Each letter also asked Fard to provide the attorney with information about her "insurance carrier."

Fard was not certain when she first received the letters from Haro's attorney, but she testified that she first learned about the January 2015 attack in May or June 2016, around the time Haro filed a complaint against her for claims related to that attack. Although Fard still owned the Tarzana home, she had leased it to a group of tenants and moved to another home in May 2012 or June 2014.⁴ Fard wasn't sure whether she had requested the United States Postal Service to forward any mail addressed to her at the Tarzana home to her current address, and she could not recall whether any of the tenants who were living at the Tarzana home between April and July 2015 gave her the letters from Haro's attorney.

Between February and June 2015, Mathews's and Anthony's dogs escaped the Property on three occasions while

³ Haro's attorney also sent two letters to Fard's office, one in August 2015 and another in September 2015. Both of those letters were sent after the incident giving rise to this lawsuit.

⁴ During a February 2017 deposition, Fard testified that she moved out of the Tarzana home in June 2014, but she later testified that "June 2014" was the incorrect date, and that she had in fact moved out of that home in May 2012. Fard submitted a copy of a lease agreement that she and four other people signed, in which Fard agreed to lease the Tarzana home starting in May 2012.

Kaur's son was walking his German Shepherd in the neighborhood. The dogs ran up to, and barked at, Kaur's son and his German Shepherd, but they never tried to bite or attack him or his dog. Kaur's son told two "ladies" who came out of the Property to retrieve the dogs to put them on leashes. At the time, neither Kaur nor her son knew who Fard was or that she owned the Property.

2. The Underlying Incident

On July 30, 2015, Kaur was attacked by Beau as she walked on the sidewalk near the Property. Beau ran toward Kaur, knocked her to the ground, and bit her hands, face, and left ear. The dog removed part of Kaur's left ear, and the impact from the fall broke Kaur's right hip. Kaur received emergency medical treatment for her injuries. Immediately after the attack, the Department of Animal Services impounded Beau. The next day, the Department removed Spot and Chocolate from the Property.

3. Kaur's Lawsuit

Kaur sued Fard, Mathews, and Anthony for claims arising out of the July 2015 incident.⁵ As to Fard, Kaur alleged a single cause of action for negligence. Kaur alleged Fard "allowed, permitted, and was fully aware that [her] tenants ... owned a large and very aggressive Pit Bull Terrier dog" and had received "complaints about the aggressive and vicious nature of [the tenants'] Pit Bull" at the Property. Fard breached her duty of care to Kaur by failing to ensure the dog "was restrained, controlled, and would not viciously attack" people walking near the Property.

⁵ Mathews and Anthony are not parties to this appeal.

Fard moved for summary judgment on the ground she owed Kaur no duty of care because Fard was not aware dogs were being kept on the Property or that any dogs on the Property were vicious or otherwise dangerous. Kaur opposed summary judgment, arguing Fard had notice that Mathews kept dangerous dogs on the Property based on the following evidence: (1) the provision in the April 2011 lease agreement allowing Mathews to keep one medium-sized Labrador Retriever on the Property; (2) Mathews's prior contacts with law enforcement and the Department of Animal Services concerning issues with Mathews' confinement of Beau, Chocolate, and Spot; and (3) the letters Haro's attorney sent to Fard's Tarzana home.⁶

In opposition to Fard's motion, Kaur submitted a declaration executed by E. Robert Miller, a "Certified Property Manager" and "Certified Property Specialist." Miller opined that because Fard included a provision in the May 2012 lease agreement prohibiting Mathews from keeping dogs on the Property, Fard should have inspected the Property to ensure Mathews was complying with that provision. Miller also opined that Fard should have inspected the Property to ensure it was being properly maintained "to prevent dogs from escaping and roaming at large." Miller explained that a pit bull is a dangerous breed of dog, and a property owner should "take additional protective steps such as simply not allowing pit bull dogs in the units."

⁶ Kaur also argued, although she did not allege such a theory in her complaint, that Fard was negligent for failing to discover and repair a hole in the Property's fence to prevent Mathews's dogs from escaping the Property.

Miller concluded that Fard “breached her duty as an owner by not making visits to the property to check on the condition of the property, the tenants in the property or follow[ing] her policies and procedures.” Miller believed “[i]t was up to Mrs. Fard to monitor the residential property as to [a] pit bull[']s presence and viciousness[,]” and that the July 30, 2015 incident “could have been prevented if [Fard] had supervised the home by having the dog removed or had a dog policy through the lease.” Miller also claimed that “Mrs. Fard did have actual knowledge that [Mathews’s] dog was dangerous and vicious ... based on the relationship between Mrs. Fard, her daughter and Mrs. Mathews, as well as the location of Mrs. Mathews[’s] family and pit bull.”

On June 2, 2017, the trial court heard Fard’s summary judgment motion. The court sustained Fard’s objection to one paragraph in Miller’s declaration, in which Miller identified “four key considerations” relevant to “the standards of care regarding pit bulls.” The court overruled all of Fard’s other evidentiary objections and granted Fard’s summary judgment motion. The court found Fard presented evidence showing she did not know Mathews kept any dangerous dogs on the Property before Beau attacked Kaur and that Kaur failed to raise a triable issue of fact as to that issue.

In June 2017, Kaur moved for a new trial. The court denied Kaur’s new trial motion and entered judgment in Fard’s favor on June 28, 2017. Kaur timely appealed from the court’s judgment.

DISCUSSION

On appeal, Kaur challenges only the court’s ruling granting summary judgment in Fard’s favor. Kaur contends the court erred because a triable issue of fact exists about whether Fard

knew, or must have known, that Mathews and Anthony kept dangerous dogs on the Property before Beau attacked Kaur on July 30, 2015. As we explain below, the court properly granted summary judgment.

1. Standard of Review

Summary judgment is appropriate where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476 (*Merrill*).) A defendant moving for summary judgment must demonstrate that one or more elements of the plaintiff's claim cannot be established or that there exists a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant meets this burden, the plaintiff must present evidence establishing a triable issue of material fact. (*Ibid.*) A triable issue of fact exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).)

We independently review a trial court's ruling on a motion for summary judgment. (*Aguilar, supra*, 25 Cal.4th at p. 860.) We liberally construe the evidence in favor of the opposing party and resolve all doubts about the evidence in that party's favor. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) We consider all evidence the parties submit in connection with the motion, except that which the court properly excluded. (*Merrill, supra*, 26 Cal.4th at p. 476.)

2. The trial court properly granted summary judgment in Fard's favor.

In California, a landlord owes a duty to protect third parties from injuries caused by a tenant's vicious dog only when the landlord "has 'actual knowledge' of the dog's vicious nature" and the ability to control or prevent the harm. (*Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 152 (*Yuzon*).) A landlord has no duty to inspect her property for the purpose of discovering the existence of a tenant's dangerous animal. (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1369–1370 (*Chee*).)

Actual knowledge may be proved by direct or circumstantial evidence. (*Yuzon, supra*, 116 Cal.App.4th at p. 163.) Thus, the defendant's " 'denial of such knowledge will not, per se, prevent liability.' " (*Ibid.*) " 'However, actual knowledge can be inferred from the circumstances only if, in the light of the evidence, such inference is not based on speculation or conjecture. Only where the circumstances are such that the defendant "must have known" and not "should have known" will an inference of actual knowledge be permitted. [Citation.]' [Citation.]" (*Ibid.*)

As a preliminary matter, we note Fard met her initial burden as the party moving for summary judgment to negate at least one element of Kaur's negligence claim—i.e., whether Fard had actual knowledge that Mathews kept dangerous dogs on the Property. In support of her motion, Fard submitted a declaration in which she testified that, before Beau attacked Kaur on July 30, 2015, she did not know that the dog, or any other dogs were being kept on the Property, or that any dogs kept on the Property had previously bitten or attacked anyone. The burden therefore shifted to Kaur to produce evidence creating a triable issue

concerning Fard's knowledge that Mathews and Anthony kept dangerous dogs on the Property before the July 30, 2015 incident. Kaur did not meet that burden here.

First, Kaur points to the April 2011 lease agreement between Fard and Mathews to argue a triable issue exists concerning whether Fard knew, or must have known, dangerous dogs were being kept on the Property before the July 30, 2015 attack. As explained above, Fard signed the April 2011 lease agreement, which contained a provision allowing Mathews to keep one medium-sized "Labrador" on the Property. Fard, however, testified that she never read the April 2011 lease agreement before this lawsuit was filed. Fard and Mathews also signed a new lease agreement in May 2012, which contained a provision expressly prohibiting Mathews from keeping a dog on the Property.

Even if a jury could infer from the April 2011 lease agreement that Fard was aware Mathews and Anthony kept dogs on the Property, such evidence would not, without more, support a finding that Fard also knew any of those dogs were dangerous. Nothing in the April 2011 lease agreement references the nature, temperament, or behavior of any dog kept on the Property, aside from the fact that the dog was supposed to be a medium-sized Labrador Retriever.

At the very least, Kaur suggests, Fard's knowledge of the provision in the April 2011 lease agreement allowing Mathews to keep a dog on the Property should have prompted Fard to visit the Property to ascertain the dog's nature. But a landlord has no duty to inspect a tenant's property unless the landlord "knew about [a dangerous] condition or had some reason to know inspection was necessary." (*Garcia v. Holt* (2015) 242 Cal.App.4th

600, 605.) The mere fact that Fard knew Mathews was keeping a dog on the Property would not be sufficient to trigger any duty to inspect the Property to discover whether the dog was dangerous. (See *Chee, supra*, 143 Cal.App.4th at pp. 1369–1370 [“ ‘a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant’s dangerous animal” ’ ”].) For the same reason, Miller’s testimony that Fard should have inspected the Property to ensure Mathews was complying with the terms of their lease agreements or for maintenance purposes does not create a triable issue of fact as to whether Fard knew, or must have known, Mathews was keeping dangerous dogs on the Property.

Second, Kaur contends a triable issue exists concerning Fard’s knowledge that dangerous dogs were kept on the Property because, before the July 30, 2015 attack, neighbors had complained about Mathews’s dogs escaping the Property, the Los Angeles Police Department had contacted Mathews about allowing her dogs to roam the neighborhood, and the Department of Animal Services had visited the Property on several occasions to cite Mathews for failing to properly confine the dogs. There is no evidence in the record, however, that Fard was ever notified before July 30, 2015 about the neighbors’ complaints, about the police visiting the Property, or about the citations the Department of Animal Services issued to Mathews. Even if we were to presume Fard was aware of those events, they would not have given her actual knowledge that the dogs were dangerous, since the dogs’ conduct leading to those events was “not so alarming that [an observer] must have known ... of [the dogs’] vicious propensities.” (See *Yuzon, supra*, 116 Cal.App.4th at pp. 164–165 [jumping, barking, pushing, lunging, or chasing other

dogs or people is not the type of behavior that would give someone actual notice of a dog's viciousness, since " 'such activities are quite common for a dog' "]).)

Third, Kaur argues she created a factual dispute regarding Fard's knowledge that vicious dogs were being kept on the Property by submitting evidence that Haro's attorney sent three letters to Fard's Tarzana home referencing the January 2015 incident involving two of Mathews's and Anthony's dogs. This evidence does not create a disputed issue because Fard was not aware of the January 2015 incident, and had no recollection of receiving any letters from Haro's attorney, before Kaur was attacked on July 30, 2015.

Although Fard still owned the Tarzana home, she moved out of that residence in May 2012 or June 2014. While Fard initially testified during her deposition that she could not recall receiving letters from Haro's attorney before July 30, 2015, and that she could not remember whether she requested the United States Postal Service to forward mail sent to the Tarzana home to her office or current residence, she consistently testified that she first learned about the "Haro incident" in May or June 2016, almost a year after Kaur was attacked. For instance, immediately after Fard testified that she could not recall receiving any letters from Haro's attorney before July 30, 2015, Kaur's attorney asked her, "When was the first time you found out about the Haro incident?" Fard replied, "I think it was May that I was served, 2016." When Kaur's attorney asked Fard to clarify that her "first knowledge of the Haro incident, or that bite attack, as it relates

to dogs at [her] property, would have been in May or June of 2016[.]” Fard replied, “yes.”⁷

Kaur also relies on Miller’s opinion that Fard “did have actual knowledge” that dangerous dogs were being kept on the Property to create a triable issue of fact. Miller based this opinion on “the relationship between Mrs. Fard, her daughter and Mrs. Mathews, as well as the location of Mrs. Mathews[’s] family and pit bull.” He did not, however, testify that he relied on any evidence that would support an inference Fard knew, or must have known, that Mathews was keeping dogs on the Property. Miller’s opinion is therefore speculative and does not create a triable issue of fact about Fard’s knowledge that Mathews kept dangerous dogs on the Property. (See *Yuzon*, *supra*, 116 Cal.App.4th at p. 163 [an inference of actual knowledge cannot be

⁷ In her opening brief, Kaur relies on evidence she submitted in support of her new trial motion—a document she claims she obtained from the Los Angeles County Assessor’s Office showing the mailing address for the Tarzana home continues to be that home’s address—to argue there is a triable issue of fact as to whether Fard would have received the letters Haro’s attorney sent to the Tarzana home. In denying Kaur’s new trial motion, however, the court found the document “lacks foundation and is hearsay.” Kaur fails to explain why that document should be considered in reviewing the court’s ruling on Fard’s summary judgment motion, since Kaur did not introduce the document until *after* the court granted summary judgment. Because the document Kaur claims she obtained from the Los Angeles County Assessor’s Office was not before the court when it ruled on Fard’s summary judgment motion, and because Kaur does not challenge the order denying her motion for new trial, we do not consider that document on appeal. (See *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632 [evidence not before the trial court will be disregarded on appeal].)

based on speculation]; *Sinai Memorial Chapel v. Dudler* (1991) 231 Cal.App.3d 190, 196 [“An issue of fact can only be created by a conflict of evidence. It is not created by ‘speculation, conjecture, imagination or guess work.’ ”].)

Finally, relying on *Donchin v. Guerrero* (1995) 34 Cal.App.4th 1832 (*Donchin*), Kaur argues she created a triable issue of fact concerning whether Fard knew dangerous dogs were being kept on the Property by showing Fard falsely testified that she did not know Mathews owned any dogs. In *Donchin*, the defendant made contradictory statements about whether he knew his tenant owned a pair of Rottweilers who attacked the plaintiff. (*Id.* at pp. 1840–1841.) The defendant initially claimed he “didn’t even know his tenant was keeping dogs of any kind on the property and hadn’t given permission to do so.” (*Id.* at p. 1841.) Later, after the plaintiff produced a lease agreement “mentioning the dogs and the tenant’s declaration [that the defendant] saw the [dogs] regularly,” the defendant submitted responses to interrogatories conceding he knew that the dogs were being kept on his property and that he played with them regularly. (*Ibid.*) The reviewing court in *Donchin* held a triable issue existed concerning the defendant’s knowledge that his tenant kept dangerous dogs on the property because the defendant’s false exculpatory statement “may be used to infer [he] ha[s] a guilty conscience about the two [R]ottweilers and his responsibility for the injuries they caused.” (*Id.* at p. 1842.)

Unlike the defendant in *Donchin*, Fard never made contradictory statements about knowing Mathews and Anthony kept dogs on the Property before the July 30, 2015 incident. Rather, she consistently testified that she did not have such knowledge. Although she signed the April 2011 lease agreement

which included the provision allowing Mathews to keep a medium-sized Labrador on the Property, this does not directly contradict her claims that she did not know Mathews was keeping dogs on the Property before July 30, 2015 for the reasons we discussed earlier. The reasoning in *Donchin*, therefore, does not apply to this case.

In sum, the trial court properly granted summary judgment in Fard's favor because no triable issue exists about whether Fard knew, or must have known, her tenants were keeping dangerous dogs on the Property before Kaur was attacked by Beau.

DISPOSITION

The judgment is affirmed. Fard is awarded her costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.